



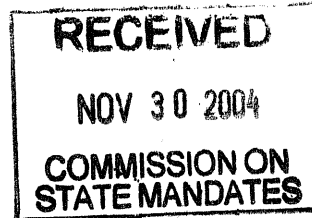
# DEPARTMENT OF FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

November 30, 2004

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in the Notice of Reconsideration for Regional Housing Needs Determination—Councils of Governments dated November 5, 2004, the Department of Finance (Department) submits comments on the following questions:

- Are Councils of Governments eligible claimants under Article XIII B, section 6 of the California Constitution?
- Does Chapter 1143, Statutes of 1980, impose a new program or higher level of service within an existing program on Councils of Governments within the meaning of Article XIII B, section 6 and costs mandated by the State pursuant to section 17514 of the Governments Code?
- Does Government Code section 17556, including the existence of fee authority preclude the Commission from finding that any of the statutory provisions impose costs mandated by the State?
- Have funds been appropriated for this program (e.g., State budget) or are there any other sources of funding available? If so, what is the source?

Councils of Governments are not eligible claimants under Article XIII B, section 6 of the California Constitution because they have no independent power of taxation, nor do the fees they receive from cities and counties constitute "proceeds of taxes" subject to Article XIII B appropriation limits. Councils of Governments, rather, are analogous to the redevelopment agencies that sought State subvention for requirements placed on their use of tax increment financing.

In these two recent decisions, *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4<sup>th</sup> 976 and *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4<sup>th</sup> 266, the court found that redevelopment agencies were not entitled to State reimbursement for required contributions of their tax increment financing to a Low and Moderate Income Housing Fund or the Educational Revenue Augmentation Fund because such financing:

Shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning or for the purpose of Article XIII B of the California Constitution, nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for the purpose of Article XIII B of the California Constitution or any other

## Attachment A

DECLARATION OF ELLIOTT MANDELL  
DEPARTMENT OF FINANCE

## Reconsideration of Regional Housing Needs Determination – Councils of Governments

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

  
\_\_\_\_\_  
Elliott Mandell11/30/04  
\_\_\_\_\_  
Date

statutory provision enacted in implementation of Article XIII B. (City of El Monte, supra, 83 Cal.App.4th 266, 271).

Councils of Governments are organized by cities and counties pursuant to the Joint Powers Act, Government Code section 6500, et seq., in order that two or more public agencies may jointly exercise any power common to the contracting parties. Nothing precludes joint power authorities (JPA) from charging a fee to the constituent cities and counties that voluntarily join the JPA, but Councils of Governments, which have been established to strengthen cooperation and coordination among local governments, have no ability to levy taxes. Accordingly, like the redevelopment agencies in the cases highlighted above, the Councils of Governments are not eligible claimants under Article XIII B, section 6 of the California Constitution.

In addition to the Councils of Governments' not being eligible claimants, Government Code section 17556 says the Commission on State Mandates shall not find costs mandated by the State if it makes certain specified findings, among them that "the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." (Government Code section 17556, subdivision (d)).

Government Code section 65584.1 gives Councils of Governments just such fee authority. Section 65584.1 reads in relevant part:

Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations under this article.

The Council need only have the authority to impose such a fee to bar State reimbursement. The ability to reasonably collect the fee in light of economic circumstances is not relevant. (*Kathleen Connell v. Superior Court of Sacramento, Santa Margarita Water District* (1997) 59 Cal.App.4th 382, 401). Accordingly, in addition to the Councils being precluded from mandate reimbursement because they lack the requisite authority to levy taxes, the fee authority of the Councils of Governments precludes the Commission from finding that any of the statutory provisions impose costs mandated by the State.

Thus, while funds have been appropriated and paid to Councils of Governments for this program in the past (Governor's Budgets reflect cumulative total expenditures of over \$9.5 million in reimbursements to Councils of Governments and cities and counties since 1984-85 for the mandates found in Chapter 1143), such expenditures should be considered a voluntary State subvention, not required by mandate law.

If you have any questions regarding this letter, please contact Elliott Mandell, Principal Program Budget Analyst, at (916) 322-2263, or Jesse McGuinn, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Mark Hill  
Program Budget Manager